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February 26, 2004

Jeff S. Jordon
Supervisory Attorney
Complaints Examination and Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5409

Dear Mr. Jordon,

Bush-Cheney '04, Inc. and Ken Mehlman have received the complaint designated as MUR 5409 and hereby provide this response. Also included herein are Designation of Counsel forms for both David Herndon and Ken Mehlman.

The complaint filed in this matter alleges that Bush-Cheney '04, Inc. and Ken Mehlman received "an in-kind contribution with a substantial market value..." by accepting information provided at a luncheon. The complainant relies on two news reports, and nothing more, to make these allegations.

As an initial matter, no provision of Commission regulations including 11 CFR § 100.52 makes publicly or otherwise readily available information a thing "of value" under the Act. While the complainant alleges that the information provided constituted a thing of value because it was a "membership list" or "mailing list," this is not an accurate or informed characterization. The actual information provided by Grover Norquist to Ken Mehlman does not meet the definition of contribution under Commission regulations. 11 CFR § 100.52.

The information actually provided was readily available information concerning regularly occurring meetings of conservative activists in several states and varied from state to state and in some instances included contact information for individuals. A list of activists in many states is available publicly on the web site of Americans for Tax Reform at <http://www.ATR.org/stategroups/index.html>.

As a result, both Bush-Cheney '04 Inc. and Ken Mehlman believe that the Commission should dismiss the complaint and take no further action in this matter.

Sincerely,

Thomas Josefiak
General Counsel

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Paid for by Bush-Cheney '04, Inc.